

**IN THE MATTER OF:  
BRUCE SHOOP**

Bruce Shoop  
For the Petitioner

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Program Manager II  
Department of Housing and  
Community Affairs

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Board of Appeals No. S-2793  
(OZAH No. 11-16)

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## **I. STATEMENT OF THE CASE**

In Petition No. S-2793, Bruce Shoop seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 18808 Muncaster Road, Derwood, Maryland. The legal description of the property is Lot 4, Block B, in the Muncaster Manor Subdivision.

Filed on November 15, 2010, the Board issued a notice of a public hearing before the Hearing Examiner for March 24, 2011. Exhibit 11(b). The hearing was rescheduled to June 13, 2011 at the Petitioner's request. Exhibits 12, 13, and 14.

Technical Staff of the Maryland-National Capital Park and Planning Commission filed its report on March 18, 2011. In its report (Exhibit 15), Technical Staff recommended approval of the special exception subject to 4 conditions, as follows:

1. Before the issuance of an accessory apartment license by the Department of Housing and Community Affairs (DHCA), the applicant must comply with the requirements of DHCA's preliminary housing inspection.
2. Per Section 29-19 of the Montgomery County Code, maximum occupancy is limited to the following:
  - a. No more than two unrelated individuals who live and cook together as single housekeeping unit, or
  - b. Up to the number of persons specified in the housing inspection report who live and cook together as a single housekeeping unit and are related by blood, marriage, or adoption.
3. Per Section 59-G-2.00(b)(1) of the Montgomery County Zoning Ordinance (see Appendix), the applicant must occupy one of the dwelling units on the lot on which the accessory apartment is located.
4. Per Section 59-G-2-00(b)(3) of the Montgomery County Zoning Ordinance), the applicant must not receive compensation for the occupancy of more than one dwelling unit. Ex. 15, pp. 1-2.

The Department of Housing and Community Affairs ("DHCA") inspected the property on June 7, 2011. Housing Code Inspector Kevin Martell, Program Manager II, reported his

findings in a memorandum dated June 9, 2011 (Exhibit 16). Mr. Martell made several findings regarding the proposed use in his report, as follows:

1. The owner lives in the accessory unit. Occupancy of the main floor is limited to two unrelated persons or to a family related by blood, marriage or adoption. The number of family related occupants allowed will be based on habitable space in the main floor unit.
2. The footprints of the main floor unit and the accessory apartment are the same. Based upon habitable space, the accessory unit measures approximately 911 square feet. The main unit measures approximately 1652 square feet. The accessory apartment is subordinate to the main floor unit.
3. Windows that meet Code standards for emergency egress must be installed in both bedrooms. Must be openable without the use of a tool with a net clear opening width of 24 inches and a minimum net clear opening height of 20 inches, with the bottom of the opening not more than 44 inches above the floor. Window wells that meet Code standards for egress must also be installed.
4. A permanent heating source capable of maintaining a temperature of 68 degrees Fahrenheit at all times must be installed in the rear bedroom.
5. The house is on a well and septic system. A Montgomery County Department of Permitting Services septic permit must be obtained and finalized.
6. The driveway has adequate off street parking. Vehicles can be parked side by side.
7. The large dirt mounds in the front of the property must be removed.
8. The kerosene heater must be removed from the accessory unit. Unvented fuel fired appliances are prohibited.
9. All wood posts, columns, roof fascia and soffit trim on house [sic] must be repainted.
10. A fire proof hearth must be installed for the living room wood stove. The hearth must extend at least 18 inches in front and 8 inches from the sides.

11. A kitchen stove complete with oven and stove top burners must be installed.
12. All dysfunctional and untagged motor vehicles, car parts, campers, lawn mowers must be removed.
13. The bathroom ceiling must be repaired. Exhibit 16.

The public hearing on the petition proceeded as scheduled. At the public hearing, Mr. Martell pointed out that Technical Staff had reviewed the application based on the assumption that the Petitioner would occupy the main floor. T. 8. As Mr. Shoop testified at the public hearing that he would be occupying the accessory apartment, the matter was referred back to Technical Staff in order to determine whether this changed their original recommendation of approval. Exhibit 25. The record was left open until June 20, 2011, to permit Technical Staff time to review the corrected facts, to receive proof of ownership of the property from the Petitioner, and to permit DHCA time to submit a report on the number of accessory apartments in the neighborhood. T. 33-35. These documents were subsequently submitted, and Technical Staff informed the Hearing Examiner that it still recommended approval of the special exception. Exhibits 20-24. On July 20, 2011, the Hearing Examiner extended the time for issuing her report due to workload and scheduling constraints. Exhibit 25.

There has been no opposition to the accessory apartment. For the reasons set forth below, the Hearing Examiner recommends approval of the special exception for an accessory apartment, subject to the conditions stated in Section V of this Report.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property and its Current Use**

The subject property is located at 18808 Muncaster Road, Derwood, Maryland, on the north side of Muncaster Road, approximately 550 west of Granby Road. Exhibit 15. The

Technical Staff Report (Exhibit 15) contains an aerial photograph showing the subject property, which is shown on the next page. The property is zoned RE-1 and is improved with a single-family home located on approximately .068 acres (29,767 square feet). Technical Staff advises that the existing home was constructed in 1962. Exhibit 15, p. 4. Access is from a driveway connecting to Muncaster Road, and the home fronts on Muncaster Road. Exhibit 15.



## **B. The Surrounding Neighborhood**

Technical Staff determined that the neighborhood consisted of the single-family homes on both sides of Muncaster Road between Granby Road and Sunwood Road on the southwest side of Muncaster and proceeding directly east across Muncaster to include the single-family homes both south and north of Willow Oak Circle which confront Muncaster Road. Exhibit 15, p. 5. According to Staff, this area is characterized single-family detached homes in the RE-1 Zone, with most properties containing over ½ acre of land. The boundaries of the neighborhood depicted in the Technical Staff report (Exhibit 15, p. 5) are shown below:



DHCA reports that there are no accessory apartments or Registered Living Units in the direct vicinity of the property. Exhibit 24.

The Hearing Examiner agrees that the area delineated by Staff constitutes the neighborhood affected by the special exception. As noted by Technical Staff, the uses within the delineated area consist primarily of single-family detached homes on larger lots within the RE-1 Zone. Exhibit 15, p. 5.



### **C. The Master Plan**

The subject property lies within the *2004 Upper Rock Creek Area Master Plan*. Exhibit 8. Technical Staff advises that the Master Plan contains no specific recommendations relevant to this particular property or for accessory apartments. Exhibit 15, p. 5. The Plan reaffirms the RE-1 zoning for the neighborhood, under which accessory apartments are a permitted special exception use. Exhibit 8.

### **D. The Proposed Use**

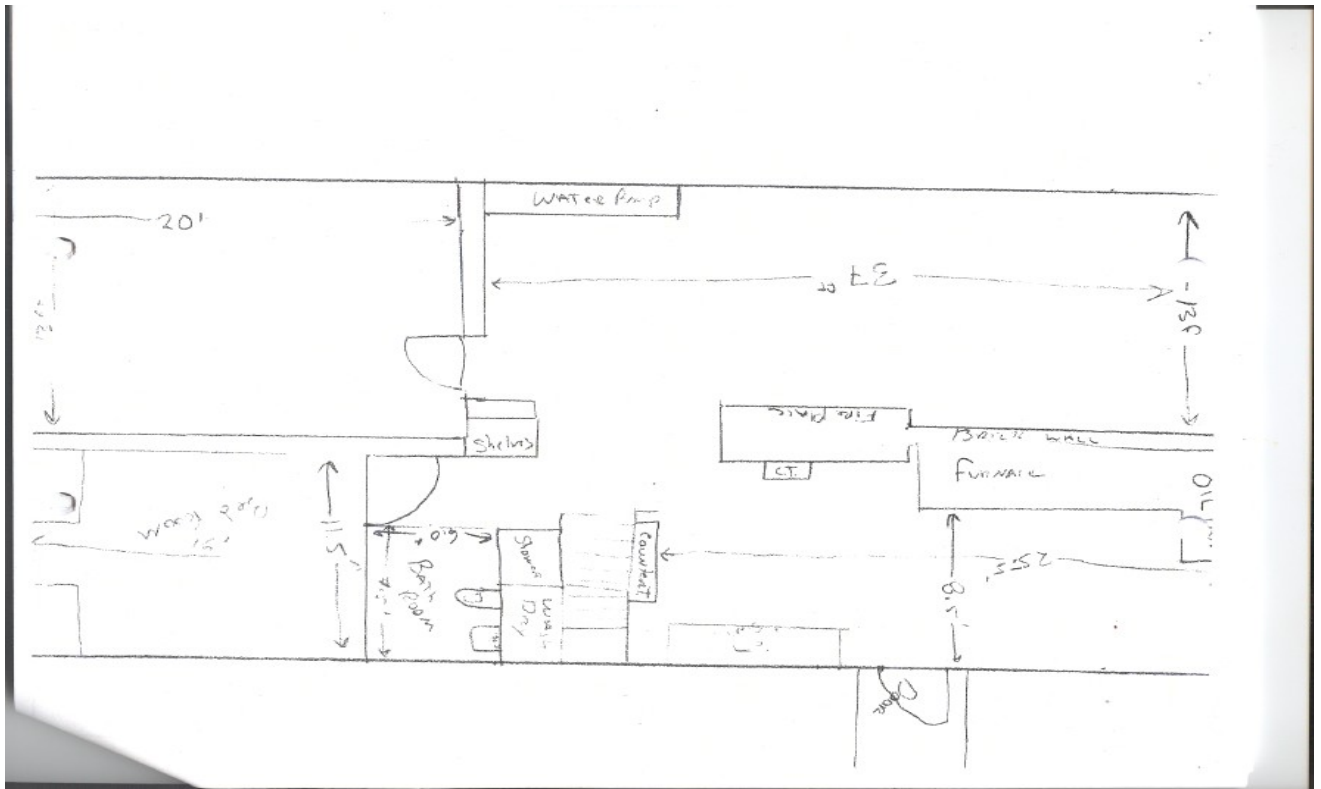
The petition proposes an accessory apartment in the basement of Petitioner's existing single story detached home. The Applicant states that the accessory apartment occupies 1,162 square feet. Exhibit 3. DHCA found, based on habitable space that "the apartment occupies 911 square feet of habitable and the main floor dwelling consists of 1,652 square feet of habitable space. Exhibit 16. Technical Staff found that

"The proposed accessory apartment is subordinate to the main dwelling and located in the basement of the main dwelling. The accessory apartment consists of 1162.5 square-foot area, therefore, is within the maximum permitted square footage allowed for an accessory apartment located within an existing house." Exhibit 15, p. 11.

A photograph taken by the DHCA Housing Inspector (Exhibit 16(s)) shows the front of the home facing Muncaster Road, shown below:



The Floor Plan submitted by the Petitioner (Exhibit 6) shows two bedrooms, a kitchen, living area and bathroom, shown below:



In its report, DHCA noted that some significant improvements must be made to the property, which are set forth in Section I of this Report and repeated again below:

1. The owner lives in the accessory unit. Occupancy of the main floor is limited to two unrelated persons or to a family related by blood, marriage or adoption. The number of family related occupants allowed will be based on habitable space in the main floor unit.
2. The footprints of the main floor unit and the accessory apartment are the same. Based upon habitable space, the accessory unit measures approximately 911 square feet. The main unit measures approximately 1652 square feet. The accessory apartment is subordinate to the main floor unit.
3. Windows that meet Code standards for emergency egress must be installed in both bedrooms. Must be openable without the use of a



tool with a net clear opening width of 24 inches and a minimum net clear opening height of 20 inches, with the bottom of the opening not more than 44 inches above the floor. Window wells that meet Code standards for egress must also be installed.

4. A permanent heating source capable of maintaining a temperature of 68 degrees Fahrenheit at all times must be installed in the rear bedroom.
5. The house is on a well and septic system. A Montgomery County Department of Permitting Services septic permit must be obtained and finalized.
6. The driveway has adequate off street parking. Vehicles can be parked side by side.
7. The large dirt mounds in the front of the property must be removed.
8. The kerosene heater must be removed from the accessory unit. Unvented fuel fired appliances are prohibited.
9. All wood posts, columns, roof fascia and soffit trim on house [sic] must be repainted.
10. A fire proof hearth must be installed for the living room wood stove. The hearth must extend at least 18 inches in front and 8 inches from the sides.
11. A kitchen stove complete with oven and stove top burners must be installed.
12. All dysfunctional and untagged motor vehicles, car parts, campers, lawn mowers must be removed.
13. The bathroom ceiling must be repaired. Exhibit 16.

In addition to the improvements listed above, Mr. Martell testified that certain deficiencies on the exterior of the property had to be corrected. T. 24-25. These included mounds of dirt in the front yard. T. 27-33. The DHCA Inspector submitted photographs of

the interior of the apartment and exterior of the home (Exhibit 16(a)-(r) to illustrate the repairs necessary, which are shown on the next several pages.



**View of Kitchen (Exhibit 16 (h))  
(No Stove)**



**Small Bedroom (Exhibit 16(c))  
Improperly Sized Egress Window**



**Large Bedroom (Exhibit 16(c))  
Improperly Sized Egress Window  
Kerosene Heater**



**Exhibit 16(f)  
Inoperable and Untagged Vehicles**





**Exhibit 16(g)**  
**Inoperable/Untagged Vehicle**



**Exhibit 16(j)**  
**(Dirt Mounds)**

Petitioner proposes to use the existing lighting on the property, which Technical Staff found to be “adequate and consistent with the residential character of the neighborhood.” Exhibit 15, p. 7. The landscape plan shows 3 switch activated floor lights—two on the north

and south corners of the rear wall and one on the south side of the building. Exhibit 15, p. 7. There are three switch activated lights at the entrance to the main dwelling, one at the side entrance, and another at the entrance to the accessory apartment. Exhibit 15, p. 7; Exhibit 5.

#### **E. Traffic Impacts**

According to Technical Staff, the Transportation Division concluded that the application meets the transportation-related elements of the adequate public facilities test and that no traffic study is required to meet either Local Area Transportation Review or Policy Area Mobility Review. Exhibit 15, p. 15.

#### **F. Environmental Impacts**

Petitioner does not propose any external changes to the site (with the exception of enlarging the window wells for the bedrooms and the corrections on the exterior previously listed). Technical Staff reports that the property is located in the Upper Rock Creek Overlay Zone, there are no environmental issues or concerns with the proposed use because no external improvements are proposed. Staff advises that an exemption from the forest conservation requirement was approved on November 12, 2010. Exhibit 15, pp. 5, 8-9.

DHCA states that the Petitioner must seek a permit for the well and septic system from the Maryland Department of the Environment, which the Petitioner has agreed to do and which requirement shall be incorporated as a condition on the special exception approval. Exhibit 16; T. 6-7. Based on this evidence, the Hearing Examiner finds that there will be no adverse impact on the environment provided that the applicant complies with the stated conditions of approval.

#### **G. Community Response**

There was no community response to the special exception request.



### **III. SUMMARY OF THE HEARING**

Petitioner testified at the public hearing in support of the petition. Mr. Kevin Martell, a DHCA inspector, also testified as to compliance with the Housing Code.

#### **A. Petitioner's Case**

##### Mr. Bruce Shoop:

Mr. Shoop, owner of the property, testified that he agreed to make all of the required repairs listed in the Housing Inspectors Report. T. 6-7. He stated that currently he has a “shared housing arrangement” with other unrelated individuals in the home. T. 12. He stated that he understood that the Housing Code does not permit the upstairs dwelling and the accessory apartment to be “shared”, but rather must operate independently. T. 16. He stated that he was making arrangements to have a separate washer/dryer put in the downstairs and upstairs units. He also agreed with the Housing Inspector that the Technical Staff Report incorrectly stated that he lived in the main dwelling. T. 16-17. He requested clarification on whether, if his elderly mother moved into the home, he could still have unrelated renters in the main dwelling. T. 11-14. After a response from the Code Inspector, Mr. Shoop stated that he understood that he could not rent the upstairs to his mother and still rent rooms in the main dwelling, although his mother could live downstairs with him. T. 11-14. He understood that, currently, he could move downstairs and still have the existing two renters upstairs. T. 14-17. He asked several times to be directed to the law stating why his current living arrangement was not legal and did not understand why his existing living arrangement was not legal. T. 19.

## **B. Public Agency Testimony**

### Housing Code Inspector Kevin Martell:

Mr. Kevin Martell identified and described the photographs attached to his report dated June 9, 2011. T. 25-31. He also described the improvements which needed to be made which were summarized in this report. T. 26-31. He had not been aware that Mr. Shoop was currently in a “shared” living arrangement and clarified that the accessory apartment and the main dwelling had to be two independent and separate dwellings. T. 14-16. When Mr. Martell had inspected the property, he was under the impression that the Petitioner was living totally independently in the basement apartment. T. 14. He also clarified that Mr. Martell’s mother could not occupy the upstairs with persons renting individual rooms. T. 8, 11-14. The habitable area of the apartment consisted of 911 square feet. The number of people living upstairs will be limited to a family, the size of which is to be determined by the square footage of the main unit, or two unrelated individuals. T. 13.

## **III. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if he complies with the recommended conditions. Exhibit 15.

There are some relatively significant repairs to be made prior to occupancy in this case. In addition, there remains some question in the Hearing Examiner's mind that Petitioner was fully aware of the restrictions on occupancy and intends to comply with them. This is based upon the fact that Petitioner managed to leave both Technical Staff and the Housing Inspector with mistaken conclusions as to his existing and proposed living arrangements. However, there is no basis in the record at this point to deny the application. As a result, the Examiner finds that, weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the

instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 15, p. 8):

- The existence of the apartment as a separate entity from the main living unit;
- The provision within the apartment of the necessary facilities and floor area to qualify as habitable space under applicable Code provisions;
- The provision of a separate entrance and walkway;
- The provision of sufficient parking and lighting; and
- The added activity from an additional household, including the potential for more pedestrian and vehicular traffic, and more noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found, “The size, scale and scope of the proposed accessory apartment will not adversely affect the residential character of the neighborhood or result in any

unacceptable noise, traffic disruption or environmental impacts.” Exhibit 15, p. 8. Thus Staff concluded that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial. Exhibit 15, pp. 8-9.

As the accessory apartment proposed here is fully contained within the interior of the single-family home, will generate only one additional trip, contains a separate entrance illuminated with lighting characteristic of residential homes, and has ample off-street parking, the Hearing Examiner concludes that there are no non-inherent adverse effects of the requested use and there will be no adverse effects sufficient to warrant denial of the petition, provided the Petitioner complies with the conditions of approval.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An accessory apartment is a permissible special exception in the RE-1 Zone, pursuant to Code § 59-C-1.31.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*



Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Approved and Adopted 2004 Upper Rock Creek Master Plan*. The Plan does not explicitly address the question of accessory apartments or this particular property, but supports the RE-1 zoning, which permits accessory apartments as special exceptions. Exhibit 8, p. 94. The Technical Staff concluded that the proposed accessory apartment would be consistent with the Master Plan. Exhibit 15, p. 14.

Moreover, because Petitioner's plans no external structural modifications to the subject property (with the exception of the wells for the egress windows), the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *2004 Upper Rock Creek Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public*

*facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. DHCA reports that there will be sufficient parking, considering the driveway space and traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are no other similar uses in the neighborhood (accessory apartments), and the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the existing lighting on the property is adequate and consistent with the residential character of the neighborhood. Exhibit 15, p. 7. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes,

odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: DHCA reports that there are no accessory apartments or registered living units in the vicinity. Exhibit 24. Technical Staff advises that there are no special exception uses in the immediate neighborhood and concluded that, “The proposed accessory apartment use will have no adverse impact on the residential nature of the property and the immediate neighborhood.” Exhibit 15, p. 15. Based on this evidence, the Hearing Examiner finds that this requirement has been met.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, provided the Petitioner complies with the conditions of approval.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 15, pp. 15-16), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use met both LATR and PAMR standards without a traffic study.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially given the amount of off-street parking on the property, the Hearing Examiner finds that the use will not cause a traffic hazard on the public roadways abutting the property and will not reduce the safety of vehicular or pedestrian traffic.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 15), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.00. Accessory apartment.***

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

##### ***(a) Dwelling unit requirements:***

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
  - (i) The lot is 2 acres or more in size; and*
  - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*



Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

*(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

*(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: SDAT records indicate that the house was built in 1962. Exhibit 20. It therefore meets the “5 year old” requirement.

*(5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection; any unrelated individuals currently living in the main dwelling will be required to vacate the premises prior to issuance of an occupancy certificate as a condition of approval.

*(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through a basement in the rear of the structure, on the lower level. Thus, there will be no change to the residential appearance of the dwelling.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioner is not proposing any new construction or modifications to the exterior of the dwelling, with the exception of enlarging the wells surrounding the basement windows, which does not affect the residential nature of the structure.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: Technical Staff concluded that the accessory apartment contained 1,162.5 square feet and that it is “subordinate to the main dwelling and located in the basement of the dwelling.” Exhibit 15, p. 11. The Housing Inspector indicates that the main dwelling contains approximately 1,652 square feet of habitable space (indicating that the floor area may be equal to or larger than that square footage). Based on this evidence, the Hearing Examiner finds that this standard has been met.

#### **59-G § 2.00(b) Ownership Requirements**

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the accessory apartment and will rent the main dwelling. While this arrangement is not “typical” for this type of use, both Technical Staff and the Housing Inspector indicate that prior interpretations of the Zoning Ordinance requirements

have permitted this scenario. Exhibit 23, T. 9-10. Because the explicit language of the Zoning Ordinance indicates that the owner may live in *either* of the dwelling units (i.e., “The owner of the lot on which the accessory apartment is located must occupy *one of the dwelling units...*”), the Hearing Examiner finds that Petitioner’s proposed use meets the requirements of the Zoning Ordinance.

*(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the SDAT records, Petitioner purchased the home in 2001, which is consistent with the deed submitted by the Petitioner. Exhibits 20, 21. Based on this evidence, the Hearing Examiner finds that the one-year rule has therefore been satisfied.

*(3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

*(4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Both the deed to the property and the SDAT records indicate that Petitioner is the current owner of the property. Therefore, the Hearing Examiner finds that this standard has been met.

*(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

**59-G § 2.00(c) Land Use Requirements**

- (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject property consists of a single lot that is approximately 29,767 square feet in size, and therefore satisfies this requirement.

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As there are no operating accessory apartments, Registered Living Units, or special exceptions in the neighborhood (Exhibits 15, 24), the Hearing Examiner finds that the petition will not create an excessive concentration of similar uses.

- (3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) More spaces are required to supplement on-street parking; or*
  - (ii) Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Technical Staff found that the existing driveway could accommodate up to five cars and DHCA found that the existing driveway provided adequate parking for the proposed use. Exhibits 15 and 16. The Hearing Examiner finds, therefore, that parking standards for the proposed use have been met.

### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibit 16) notes certain issues, and recommends that occupation of the accessory apartment be limited either a family or individuals based on the amount of habitable space in the main dwelling. As mentioned above, Petitioner has agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

### **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2793, which seeks a special exception for an accessory apartment to be located at 18808 Muncaster Road, Derwood, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;
2. Prior to occupancy, the Petitioner must make the repairs needed to comply with the conditions set forth in the Memorandum of Kevin Martell, Division of Housing and Community Affairs, (Exhibit 16) and any additional repairs as required by DHCA, including, without limitation:
  - a. Windows that meet Code standards for emergency egress must be installed in both bedrooms. Must be able to be opened without the use of a tool with a net clear opening width of 24 inches and a minimum net clear opening height of 20 inches, with the bottom of the opening not more than 44 inches above the floor. Window wells that meet Code standards for egress must also be installed
  - b. A permanent heating source capable of maintaining a temperature of 68 degrees Fahrenheit at all times must be installed in the rear bedroom.
  - c. A Montgomery County Department of Permitting Services septic permit must be obtained and finalized.
  - d. The large dirt mounds in the front of the property must be removed.



- e. The kerosene heater must be removed from the accessory unit. Unvented fuel fired appliances are prohibited.
  - f. All wood posts, columns, roof fascia and soffit trim on house [sic] must be repainted.
  - g. A fire proof hearth must be installed for the living room wood stove. The hearth must extend at least 18 inches in front and 8 inches from the sides.
  - h. A kitchen stove complete with oven and stove top burners must be installed.
  - i. All dysfunctional and untagged motor vehicles, car parts, campers, lawn mowers must be removed.
  - j. The bathroom ceiling must be repaired.
3. The owner must live in the accessory unit. Occupancy of the main floor is limited to two unrelated persons or to a family related by blood, marriage or adoption. The number of family related occupants allowed will be based on habitable space in the main floor unit as determined by the Department of Housing and Community Affairs.
4. Petitioner must not receive compensation for the occupancy of more than one dwelling unit.
5. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: August 5, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lynn A. Robeson', with a long horizontal line extending to the right.

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Lynn A. Robeson  
Hearing Examiner